

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7815 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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EXECUTIVE ENGINEER

Versus

SONERA VARSUR KHIMJIBHAI

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Appearance:

MS NAYANA V PANCHAL for Petitioner

MR HK RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/06/98

ORAL JUDGEMENT

#. Rule. Mr.H.K.Rathod waives the service of rule.  
This petition is filed by the present petitioner to challenge the order passed by the labour court at Junagadh in Reference No : (LC) J. No.1069 of 1990.

#. The respondent Sonera Varsur Khimjibhai, was working with the present petitioner as a daily wager from 3rd November,1984 as per his case. It is his further

case that on 22nd July,1987, his services were terminated by oral order without holding any inquiry or without issuing a notice as well as payment of any compensation. He therefore raised a industrial dispute before the authorities and as there could not be any reconciliation, the reference was made to the labour court.

#. It was contention of the present petitioner in the said industrial dispute as well as before the labour court that the claim of the original petitioner - the respondent before me that he was in service since 3rd November,1984, was not correct. It is further contended that the respondent himself has remained absent from 19th November,1986 and the claim of the petitioner - present respondent before me that his services were terminated by oral order dated 22th July,1987, are not correct. It is their further contention that after 19th November,1986, the respondent turned up on 26th August,1987 but by that time, the Government of Gujarat had taken a decision to have the economy and had therefore issued circular not to continue temporary appointments and not to create any new appointments. Consequently, when he turned up on 26th August,1987, he was not taken on the job as daily wager on account of the said Government Circular as well as on account of fact that there was already another employee taken in his place.

#. The labour court has found that the respondent had worked more than 240 days in the period of 12 months and therefore he was eligible for being made a permanent employee. The labour court also found that the claim of the present petitioners that they have not terminated his services, is not correct and the labour court found favour with the claim of the respondent that his services were terminated by the oral order of the 22nd July,1987. The labour court further found that there was protraction of the proceedings before it by the workman, therefore though he was entitled to reinstatement, he was not entitled to get 75 % of his backwages. The labour court therefore passed an order directing the present petitioner to reinstate the respondent with 25 % of backwages.

#. Being felt aggrieved by the said decision, the employer - the present petitioners have come before this court. This court is also considering the present petition under Article 226 of the Constitution of India. When this court is considering this petition under Article 226 of Constitution of India, this court cannot act as an appellate authority. This court will entertain this petition and interfere with the findings of the

labour court only if the same are found to be perverse or illegal. Therefore bearing this aspect of the proceedings, I proceed to consider the submissions made before me. The learned advocate for the petitioners Smt.Pandya vehemently argued before me that the labour court was not at all justified in accepting the claim of the respondent that he was working since the year 1984 and that he was entitled to be regularized and to be permanent employee of the petitioner. As per the claim of the respondent, he joined service of the present petitioner on 3rd November,1984. It must be remembered that the present petitioners are representing a public body therefore the petitioners would have produced documentary evidence to show as actually on what date they had issued appointment order of the respondent. But they have not produced any documentary evidence to show that as a matter of fact the respondent appointment was not on 3rd November,1984 but it was on any other particular date. Now, apart from this, if the written statement filed by the petitioners before the labour court is taken into consideration, then it would be quite clear that the labour court was justified in accepting the claim of the workman. In the said written statement which is filed as Annexure - A at Page-10 of this petition, in the first para of the reply to Issue No.1, it has been mentioned by the present petitioner that between December,1984 and November,1986, the present respondent had completed duty for 550 days. Thus by this pleading, they admitted his duty from December,1984. Here also, it is very pertinent to note that they have not given the specific date of December,1984. As stated earlier, the present petitioners have not produce any documentary evidence like appointment letter or office order to show as actually on what date the appointment order of the respondent was issued by the petitioners' office. Therefore in these circumstances, if the labour court accepted the testimony of the workman, then it could not be said that the said acceptance is a perverse action of the labour court.

#. As stated earlier, in the written statement, the petitioners themselves have clearly admitted that between December,1984 and November,1986, the workman had completed 550 days as daily wager. Now, this period of between December,1984 to November,1986 is of less than 2 years therefore it is obvious that during a period of 12 months the workman had completed 240 days. Therefore the original petitioner - present respondent's claims fall under Section-25 F. No permission to terminate his services is obtained from authority and admittedly no notice for termination of the services of the respondent

was issued. No notice pay or compensation was paid to the respondent by the present petitioner, therefore in the circumstances, normal rule will be, to give reinstatement to the workman with full backwages.

#. But the labour court has not allowed him full backwages and has awarded only 25 % of wages at the rate of the wages which he was drawing on the last date of his working. This has been done by the labour court by taking into consideration the conduct of the workman there. The labour court has clearly recorded a finding of the fact that there was unnecessary delaying of the proceedings by the workman and the workman had also taken lot of time to produce his evidence in support his claim therefore taking into consideration these circumstances, the labour court has already penalized the workman by denying the full back wages which he would have normally secured, had he been prompt in proceeding and had he not delayed the proceeding.

#. Therefore, in view of the above discussion, it is quite clear that the order passed by the labour court in ordering reinstatement of the respondent and only granting 25 % of backwages at the rate of wages lastly drawn by him till date of his reinstatement, is quite proper and just and there are no grounds to interfere with the said order by exercising the power under Article 226. I, therefore held that the present petition will have to be dismissed. In the circumstances, I direct the parties to bear their respective cost. I also direct the present petitioner to comply with the award of the labour court within 4 weeks from today. Rule discharge.

Date : 24th July,1998 (S.D.Pandit, J.)

(KPP)